

# Virginia Administrative Code

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## 12VAC35-200-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means a person for whom respite care or emergency care services are sought.

"Case management community services board (CSB)" means a citizens board established pursuant to '37.1-195 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge.

"Catastrophe" means an unexpected or imminent change in an individual's living situation or environment that poses a risk of serious physical or emotional harm to that individual.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge plan" or "predischarge plan" means a written plan prepared by the case management CSB in consultation with the state facility pursuant to '37.1-197.1 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and documents the planning for services after discharge.

"Emergency care" means the placement of an individual with mental retardation in a facility when immediate care is necessary due to a catastrophe and no other community alternatives are available. The total number of days that emergency or respite care services, or both, are used shall not exceed 21 consecutive days or 75 days in a calendar year. This emergency care is not intended as a means of providing evaluation and program development services, nor is it intended to be used to obtain treatment of medical or behavioral problems.

"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Guardianship" means:

1. For minors--An adult who is either appointed by the court as a legal guardian of said minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.
2. For adults--a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at '37.1-134.6 of the Code of Virginia.

"Least restrictive setting" means the treatment and conditions of treatment that, separately or in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment including medical treatment on behalf of an individual who lacks the mental capacity to make these decisions.

"Mental retardation" means the substantial subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.

"Respite care" means the placement of an individual with mental retardation in a state facility when placement is solely for the purpose of providing temporary care because of medical or other urgent conditions of the caretaking person. The total number of days that respite or emergency care services, or both, are used is not to exceed 21 consecutive days or 75 days in a calendar year. Respite care services are not intended as a means of providing evaluations and program development services, nor are they intended to be used to obtain treatment of medical or behavioral problems or both.

### **12VAC35-200-20. Respite care.**

A. Applications for respite care in state facilities shall be processed through the case management CSB. A parent, guardian, or legally authorized representative seeking respite care for an individual with mental retardation shall apply first to the CSB that serves the area where the applicant, or his parent, guardian, or legally authorized representative is currently residing. If the case management CSB determines that respite care services for the applicant are not available in the community, it shall forward an application to the facility serving individuals with mental retardation from that geographic section of the state in which the applicant or his parent, guardian, or legally authorized representative is currently residing.

The application shall include:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status;
4. A psychological evaluation that has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
5. A current individualized education plan for school aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
6. A vocational assessment for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
7. A statement from the case management CSB that respite care services for the applicant are not available in the community; and
8. A statement from the case management CSB that the appropriate arrangements will be made to return the

individual to the CSB within the time frame required under this regulation.

B. Determination of eligibility for respite care services shall be based upon the following criteria:

1. The applicant has a primary diagnosis of mental retardation and functions on a level that meets the facility's regular admission criteria;
2. The applicant's needs for care and supervision are such that, in the event of a need for temporary care, respite care services would not be available in a less restrictive setting; and
3. The facility has appropriate resources to meet the care and supervision needs of the applicant.

Within a reasonable time of the receipt of the completed application, the facility director, or his designee, shall provide written notice of his decision to the case management CSB. This notice shall state the reasons for the decision.

If it is determined that the applicant is not eligible for respite care, the person seeking respite care services may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner shall notify the facility director and the facility director shall forward the application packet and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the person seeking respite care to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.

C. Respite care is provided in state facilities under the following conditions:

1. The length of the respite care stay at the facility shall not exceed 21 consecutive days or a total of 75 days in a calendar year;
2. Information on file at the facility is current;
3. Space and adequate staff coverage are available on a unit with an appropriate peer group for the applicant and suitable resources to meet his care and supervision needs; and
4. A physical examination performed by the facility's health service personnel at the time of the respite care admission has determined that the applicant's health care needs can be met by the facility's resources during the scheduled respite care stay.

If for any reason a person admitted for respite care services is not discharged at the agreed upon time, the case management CSB shall develop a discharge plan as provided in "37.1-98 and 37.1-197.1 of the Code of Virginia.

Respite care shall not be used as a mechanism to circumvent the standard admissions procedures as provided in '37.1-65.1 of the Code of Virginia. No person who is admitted to a training center in response to this chapter shall, during the time of such respite care admission, be eligible for admission to any training center in response to '37.1-65.1 of the Code of Virginia.

#### **12VAC35-200-30. Emergency care.**

A. In the event of a catastrophe necessitating immediate, short-term care for an individual with mental retardation, emergency care may be requested by a parent, guardian, or legally authorized representative by calling the case management CSB. If the case management CSB determines that respite care services for the

applicant are not available in the community, it may request an emergency admission to the facility serving that geographic area in which the applicant, his parent, guardian, or legally authorized representative resides.

The case management CSB shall make every effort to obtain the same case information required for respite care admissions, as described in 12VAC35-200-20 A, before assuming responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency care admission.

B. Acceptance for emergency care admissions shall be based upon the following criteria:

1. A catastrophe has occurred requiring immediate alternate arrangements to protect the individual's health and safety;
2. The individual has a primary diagnosis of mental retardation and functions on a level that meets the facility's regular admissions criteria;
3. All other alternate care resources in the community have been explored and found to be unavailable;
4. Space is available on a unit with appropriate resources to meet the individual's care and supervision needs;
5. The facility's health services personnel have determined that the individual's health care needs can be met by the facility's resources; and
6. The length of the emergency care stay at the facility will not exceed 21 consecutive days or a total of 75 days in a calendar year.

C. Within 24 hours of receiving a request for emergency care, the facility director, or his designee, will inform the case management CSB whether the applicant is eligible for emergency care and whether the facility is able to provide emergency care services.

If the facility is able to provide emergency care services, arrangements shall be made to effect the admission as soon as possible.

If the facility is unable to provide emergency care services to an eligible applicant, the facility director or designee shall provide written notice of this determination to the case management CSB and may offer to try to obtain emergency care services from another appropriate facility.

If for any reason a person admitted to a facility for emergency care is not discharged at the agreed upon time, the case management CSB shall develop a discharge plan as provided in "37.1-98 and 37.1-197.1 of the Code of Virginia.

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